IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

Crl.MC.No. 4225 of 2003

CC.54/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PERINTHALMANNA

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PETITIONER/1ST ACCUSED:

MUHAMMEDALI S/O. HAMZA,
CHEYRIYADAN HOUSE,
MELATTUR AMSOM,
UCHARAKKADAVU DESOM.

BY ADV. SRI.A.MOHAMED MUSTAQUE
SRI.M.K.SUMOD
SRI.KAUSER EDAPPAGATH

RESPONDENTS/COMPLAINANT/STATE:

1. THE SUB INSPECTOR OF POLICE,
   MELATTUR POLICE STATION, MELATTUR.

2. THE STATE OF KERALA, REP. BY PUBLIC
   PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.M.C.No. 4225 of 2003

ORDER

Petitioner is the sole accused in C.C.No.54/03 on the file of the Judicial First Class Magistrate's Court-II, Perinthalmanna. The prayer in this Crl.M.C. is to quash the proceedings in C.C.No.54/03 as against him.

2. The main contention that is advanced is that he was the first accused in C.C.No.169/98 on the file of the above court, wherein, as he was not available at the time of trial, the second accused alone faced trial and he was found not guilty and acquitted and the case as against the petitioner was being split up and re-filed as C.C.No.54/03 and that inasmuch as it has been found, vide Annexure A1 judgment in C.C.No.169/98, that the second accused is not guilty of the offences alleged and he was acquitted, proceeding with the trial of the case against the petitioner will not serve any purpose, except wasting time of court and that

asking him to face trial in the re-filed case will be an abuse of the process of court.

3. It has been held by a Full Bench of this Court in **T.Moosa v. S.I. of Police** (ILR 2006 (1) Kerala 237) that the fact that the accused, who faced trial, was acquitted is no ground to acquit the co-accused, who was not available at the time of trial and against whom, case has been re-filed.

4. It is further argued before me by the learned counsel for the petitioner that offences under Sections 353 and 294(b) IPC, even on the allegations in the final report, will not stand, in view of the allegations therein. The petitioner has not produced the FIR or the final report in the case and what is produced is only Annexure A1 judgment in C.C.No.169/98. Hence, this Court is unable to consider on the arguments advanced as to whether the ingredients of the offences under Sections 353 and 298(b) IPC are made out or not.

5. Counsel for the petitioner submits that a direction be given to the court below to consider

the bail application of the petitioner and pass appropriate orders on the same day, on which the application is filed for the reason that the petitioner apprehends that he would be detained, as warrant against him is pending for a pretty long time.

In the result, I dispose of this Crl.M.C. directing the petitioner to surrender before the Magistrate concerned positively on or before 23.8.2007 and to deposit an amount of Rupees ten thousand by way of cash security. If the above condition is complied with, the learned Magistrate shall consider the bail application that may be filed by the petitioner and pass appropriate orders on the same day itself and if he decides to grant bail, to do so, imposing necessary conditions, as he deems fit.

8th August, 2007 (K.P.Balachandran, Judge)

tkv